

CIVIL COVER SHEET

ORIGINAL

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Rosario Maria Baez Martinez, Individually And As Representative of The Estate of Tito Livio Bautista, Deceased, And As Next Friend of Jeremy Bautista

DEFENDANTS

American Airlines, Inc. and Airbus Industrie, G.I.E.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

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II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF
Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☒ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☒ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input checked="" type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> B20 Copyrights <input type="checkbox"/> B30 Patent <input type="checkbox"/> B40 Trademark SOCIAL SECURITY <input type="checkbox"/> B61 HIA (1395ff) <input type="checkbox"/> B62 Black Lung (923) <input type="checkbox"/> B63 DIWC/DIWW (405(g)) <input type="checkbox"/> B64 SSID Title XVI <input type="checkbox"/> B65 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> B70 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> B71 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus. <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. 1332 (a)

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE June 12, 2003

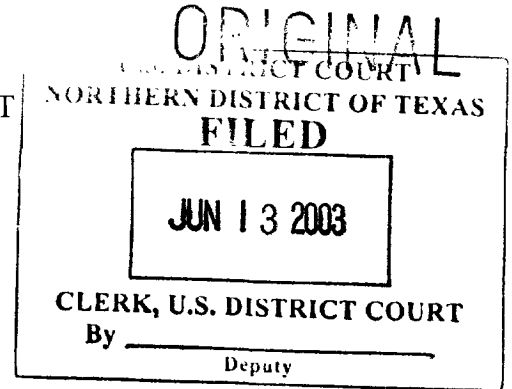
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

CTJ
ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



ROSARIO MARIA BAEZ MARTINEZ, §
Individually, and As Representative §
of The Estate of TITO LIVIO §
BAUTISTA, Deceased, And As Next §
Friend of JEREMY BAUTISTA §
vs. §
§
AMERICAN AIRLINES, INC., and §
AIRBUS INDUSTRIE, G.I.E. §
Defendant §

CIVIL ACTION NO. _____
3-03 CV 1324 - M

PLAINTIFFS' ORIGINAL COMPLAINT

Now Come, ROSARIO MARIA BAEZ MARTINEZ , Individually, and As Representatives of The Estate of TITO LIVIO BAUTISTA, Deceased, and as next friend of Jeremy Bautista Plaintiffs complaining of AMERICAN AIRLINES, INC., and AIRBUS INDUSTRIE, GIE and would respectfully show the Court as follows:

I.

PARTIES

1.1 Tito Livio Bautista was a passenger aboard American Airlines Flight 587. At the time of his death, he was a citizen of The United States.

1.2 Defendant, American Airlines, Inc. ("American"), is a corporation organized under the laws of the State of Delaware with its principal place of business in Tarrant County, Texas. At all times pertinent to this action, American was duly authorized by the United States to operate its business as an air carrier.

1.3 Defendant Airbus Industrie, GIE (“Airbus”) is a simplified joint stock company organized under the laws of France. Airbus is in the business of designing, manufacturing, and selling airplanes. Although Airbus is a resident and citizen of a foreign county, its is authorized to and does business in the United States, including the State of Texas.

II.

JURISDICTION AND VENUE

2.1 This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a), because this action, which has a controversy in excess of \$75,000.00, is between citizens of different states.

2.2 This Court has personal jurisdiction over American and Airbus because they are authorized to, and do, business in the State of Texas and have sufficient contacts with the State of Texas, both generally and with regard to this specific action, so that the exercise of personal jurisdiction over them is proper.

2.3 This is a proper venue, pursuant to 28 U.S.C. §1391 (A) and (d), because it is the District in which American resides, and Airbus, an alien, may be sued in any District.

III.

GENERAL ALLEGATIONS OF FACT

3.1 On November 12, 2001, American operated Flight 587, which was scheduled to take off from Kennedy International Airport, in New York, and arrive in Santo Domingo, Dominican Republic. The flight path was to be almost entirely over water.

3.2 The airplane of Flight 587 was an Airbus A-300-600, identification number N14053.

3.3 Flight 587 took off at approximately 9:15 a.m. (EST), shortly after Japan Airlines (“JAL”) Flight 47. Within minutes after takeoff, Flight 587 encountered two wake vortices generated by JAL Flight 47. At this time, the plane was over Jamaica Bay. The airplane experienced strong lateral movements, as its rudder and vertical tail fin detached from the body of the airplane and fell in to the Bay. Then, the airplane’s two engines fell off the aircraft. Finally, the airplane crashed into the ground, and exploded, killing every person on the airplane.

3.4 Tito Livio Bautista was fare-paying customer aboard Flight 587.

3.5 Tito Livio Baustista, deceased, was survived by his wife, Rosario Maria Baez Martinez and son, Jeremy Bautista Baez.

CLAIMS OF RELIEF

IV.

NEGLIGENCE-AMERICAN AIRLINES, INC.

4.1 At all times pertinent to this action, American had a duty to exercise the highest degree of care for the safety of its passengers aboard Flight 587, including, Tito Livio Bautista, deceased.

4.2 American, through its agents, officers, and employees, breached its duty of care for the safety of its passengers aboard Flight 587, including, Tito Livio Bautista, deceased, because it was negligent in its testing, inspection, maintenance, and repair of the airplane (N14053) and its mechanical and structural components, including violations of Federal Aviation Regulations §43.13,

thereby breaching its duty of care to Plaintiffs and causing Plaintiffs' damages.

4.3 American, through its agents, officers, and employees, breached its duty of care of the safety of its passengers aboard Flight 587, including, Tito Livio Bautista, because it was negligent in training and instructing its pilots, and flight crew, especially with regard to the dangerous and reckless use of the rudder when responding to turbulence.

4.4 American, through its agents, officers, and employees, breached its duty of care for the safety of its passengers aboard Flight 587, including Tito Livio Bautista, because it was negligent in failing to provide the highest degree of care with regard to safety, in that it operated an airplane that it knew, or should have known, was defective in manufacture and/or design, thereby breaching its duty to care to Plaintiffs and causing Plaintiffs' damages.

4.5 American, through its agents, officers, and employees, breached its duty of care of the safety of its passengers aboard Flight 587, including Tito Livio Bautista, deceased, because it was negligent in implementing the flight, so that it allowed the airplane (N14053) to encounter the wake vortices generated by JAL Flight 47, thereby breaching its duty of care to Plaintiffs and causing Plaintiffs' damages.

4.6 American, through its agents, officers, and employees, breached its duty of care of the safety of its passengers aboard Flight 587, including Tito Livio Bautista, deceased, because it was negligent in failing to provide the highest degree of care with regard to safety, in that it operated an airplane that it knew, or should have known, was defective in manufacture and/or design, thereby breaching its duty to care to Plaintiffs and causing Plaintiffs' damages.

4.7 American committed acts of omission and commission, which collectively and

severally constituted negligence, which were a proximate cause of the crash of Flight 587 and the damages of the Plaintiffs.

V.

STRICT LIABILITY -AMERICAN AIRLINES

5.1 In the alternative to the claim for damages arising from American's negligence, American is strictly liable to Plaintiffs' damages, pursuant to the Convention for the Unification of Certain Rules Relating to Internal Transportation by Air (commonly referred to as the "Warsaw Convention"). Plaintiffs allege that Defendant American is strictly liable for the first \$100,000.00 "Special Drawing Rights" for which demand is hereby made.

VI.

PRODUCTS LIABILITY -AIRBUS INDUSTRIE, GIE

6.1 The airplane, model Airbus A-300-600 (identification number N14053) in question was originally designed, manufactured, and sold by Airbus.

6.2 At the time the airplane in question was sold, Airbus was in the business of designing, manufacturing, and selling airplanes such as the one in question.

6.3 At the time the airplane was designed, manufactured, and sold by Airbus, it was defective in design and unreasonably dangerous as designed. The defective design resulted in the rudder and vertical tail fin unexpectedly detaching from the airplane and the engines unexpectedly falling off the airplane. There was a safer alternative design other than the one used, which was economically and technologically feasible and would have prevented or significantly reduced the risk

of the accident in question without substantially impairing the airplane's utility. Further, at the time the airplane in question was sold, the defective design caused the product to unexpectedly fail to function in a manner reasonably expected by an ordinary consumer and user of airplanes. The defective and unreasonably dangerous design of the airplane was a producing cause of the accident and the damages of Plaintiffs.

6.4 At the time the airplane in question left the possession of Airbus, it was defective in manufacture because it was an unreasonably dangerous product. The product was dangerous to the extent beyond which would be contemplated by the ordinary user of the product with ordinary knowledge common to the community as to the product's characteristics. The defective manufacture of the airplane at issue includes improper construction or defects so that the rudder and vertical tail fin unexpectedly detached from the airplane and the engines unexpectedly fell off the airplane. The defective and unreasonably dangerous manufacture of the airplane was a producing cause of the accident and the damages of Plaintiffs.

6.5 At the time the airplane in question left the possession of Airbus, it did not have adequate warnings of the product's dangers that were known by, or should have been known by, Airbus. Defendant failed to give adequate instructions to avoid the dangers associated with its product, such as the rudder and vertical tail fin unexpectedly detaching from the airplane and the engines unexpectedly falling off the airplane, which resulted in loss of control and the eventual crash of the airplane. Airbus failed to warn users of its product of the proper manner to inspect and maintain the composite structure of the rudder and vertical tail fin. These failures rendered the product unreasonably dangerous as marketed. The marketing defect was producing cause of the accident and the damages of the Plaintiffs.

6.6 At the time of the accident, the airplane was in substantially the same condition as it was at the time it was placed into the stream of commerce. Nobody made any material alterations to the airplane. At the time of the accident, the airplane was in the same or substantially similar condition as when it left the control of Airbus.

VII.

PRODUCTS LIABILITY - AMERICAN AIRLINES

7.1 American, as a person engaged in the business of distributing or otherwise placing the airplane in the stream of commerce for commercial use, is strictly liable for Plaintiffs' damages caused by the defects of the airplane, as described in paragraphs 6.1-6.6 above.

VIII.

NEGLIGENT - AIRBUS INDUSTRIE, GIE

8.1 Airbus committed acts of omission and commission, which collectively and severally constituted negligence, which were a proximate cause of the crash of Flight 587 and the damages of Plaintiffs.

8.2 Airbus's acts of negligence include the following:

8.2(a) Negligently designing the airplane;

8.2(b) Negligently testing the airplane;

8.2(c) Negligently designing the airplane of from a composition standpoint so that the rudder and vertical tail fin would detach from the airplane in flight and the engines would fall from the airplane in flight;

8.2(d) Failing to test the airplane to assure the rudder and vertical tail fin would not

detach from the airplane in flight and the engines would not fall off the airplane in flight;

- 8.2(e) Negligently manufacturing the airplane;
- 8.2(f) Negligently failing to warn consumers and ultimate users of the airplane of dangers associated with the rudder and tail fin and the engines;
- 8.2(g) Negligently failing to disclose post-sale information known about the dangers and defects of the airplane;
- 8.2(h) Negligently concealing known dangers associated with the airplane;
- 8.2(i) Negligently quality control procedures resulting in poor quality airplane production;
- 8.2(j) Failing to adequately train and assist air carriers in the dangers associated with the airplane;
- 8.2(k) Failing to disclose known problems and defects;
- 8.2(l) Negligently marketing the airplane as a safe and stable commercial passenger aircraft;
- 8.2(m) Failing to meet or exceed internal guidelines;
- 8.2(n) Negligently designing the airplane from a marketing standpoint;
- 8.2(o) Failing to inform the consumers and users of the airplane of information that Airbus knew about the risk in and defects of the airplane, thus depriving users of the right to make a conscious and free choice;
- 8.2(p) Failing to notify consumers that a defect exists in the airplane that relates to public safety; and
- 8.2(q) Failing to recall the airplane or, alternatively, retrofitting the airplane to enhance safety.

IX.
402B MISREPRESENTATION

9.1 Airbus misrepresented the character and quality of the airplane. The misrepresentations were of such a nature as to render Airbus strictly liable for the injuries to Plaintiffs. Airbus engaged in the course of advertising, marketing, and promoting this line of airplanes, including the one in question. Airbus made false representations that included express and implied misrepresentations of material fact concerning the character and quality of the product and materials used in constructing the airplane in question. The misrepresentations were through advertising, marketing, and promoting the product, the totality of which, taken as a whole, falsely misrepresented that the product was safe for use in a manner indicated by Airbus to be suitable for consumers such as Plaintiffs.

X.
GROSS NEGLIGENCE, WILLFUL ACTS OR OMISSIONS, AND MALICE

10.1. Defendants committed gross neglect, willful acts or omissions, and/or malice, which was a proximate cause of the injuries to the Plaintiffs and the damages of the Plaintiffs and for which the Plaintiffs are entitled to recover punitive damages.

DAMAGES

XI.

COMPENSATORY DAMAGES

11.1 At the time of the accident made the basis of this suit, Tito Livio Bautista, deceased, was a healthy man. As a result of the injuries to and death of Tito Livio Bautista, Rosario Maria Baez Martinez and Jeremy Bautista, suffered damages to the nature and degree of care, maintenance, services, advise, counsel, love, comfort, companionship, which they otherwise would have received from, Tito Livio Bautista, deceased, and mental anguish, and other resulting damages. They seek compensatory damages pursuant to the Texas Wrongful Death Act, Survival Statute or, alternatively, maritime law.

XII.

PUNITIVE DAMAGES

12.1 Because American and Airbus are guilty of gross neglect, willful acts or omissions, and malice, they should have punitive damages assessed against them in amount deemed appropriate by the jury.

XIII.

PRE-JUDGEMENT AND POST-JUDGMENT INTEREST

13.1 Plaintiffs seek pre-judgment and post-judgment interest as provided by law.

XIV.

CONSTITUTIONAL ALLEGATIONS

14.1 Plaintiffs allege that the provision within Section 41.008(b) of the Texas Civil Practice and Remedies Code limiting the amount of exemplary damages assessed against a Defendant to two times the amount of economic damages plus an amount equal to any non-economic damages found by the jury, not to exceed \$750,000.00, or \$200,000.00, whichever is greater, is unconstitutional, as it is in violation of (1) Section One of the Fourteenth Amendment of the constitution of the United States, which guarantees due process and equal protection of the laws; (2) Article I, §3 of the Texas Constitution, which guarantees protection of the laws; (3) Article I, §13 of the Texas constitution, which guarantees access to open courts for every person for an injury done him, and that each such person shall have remedy by due course of law; (4) Article I, §19 of the Texas constitution, which guarantees due course of the law; (5) Article II, §1 of the Texas constitution, which prohibits any one of the three branches of government from exercising any power properly attached to either of the others, specifically, prohibiting the legislature from exercising power properly attached to the judiciary; (6) Article III, §56 of the Texas constitution, which prohibits the legislature from passing any local or special law authorizing limitation of civil actions; and (7) Article I, §15 and Article V, §10 of the Texas Constitution, which guarantee the right to a trial by jury in civil cases.

XV.

JURY DEMAND

15.1 Plaintiffs request a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, that this cause be set down for the trial before a jury, and that Plaintiffs recover judgment of and from the Defendants for her actual and exemplary damages, in such amount as the evidence may show and the jury may determine to be proper, together with pre-judgment interest and post-judgment interest, costs of suit, and such other and further relief as Plaintiffs may show themselves to be entitled.

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BY: Leo Pruneda
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Texas State Bar# 16373400
Rosario Maria Baez Martinez
Individually and
As Representatives of Tito Livio Bautista
And as next friend of Jeremy Bautista

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